IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

Bail Appl..No. 5781 of 2007()

CRMP.3249/2007 of DISTRICT COURT, PALAKKAD
CRIME NO.162/07 OF MANKARA POLICE STATION

.....

PETITIONER : APPLICANT/ACCUSED NO.1

P.K.JAYAPRAKASAN ALIAS KUTTAN,
CHATHAN SEVA MADAM, NAGARIPURAM,
MANNUR, PALAKKAD.

BY ADV. SRI.P.VIJAYA BHANU
SRI.M.REVIKRISHNAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 5781 OF 2007

Dated this the 3rd day of October, 2007

ORDER

Application for anticipatory bail. The petitioner is the 1st accused in a crime registered under Sec.326 of the IPC. Investigation is in progress. The petitioner apprehends imminent arrest.

2. According to the petitioner, he is absolutely innocent. False and frivolous allegations are now being raised against the petitioner about an incident which took place on 12/8/07. Two crimes have been registered as Crime Nos.162 and 165 of 2007 at the Mankara Police Station. In this crime i.e., Crime No.162/07, allegations are raised under Secs.324 and 326 of the IPC. In the other – a counter case, allegations are raised under Sec.324 of the IPC.

3. The crux of the allegations in this crime raised against

the petitioner and some others is that the petitioner was driving an autorikshaw with some passengers in it. Some from the party of the de facto complainant allegedly wanted to stop the vehicle. The autorikshaw went a little away and stopped there. Then the persons who wanted the autorikshaw to be stopped, come near the autorikshaw. The driver of the autorikshaw/the petitioner was not prepared to take them in the autorikshaw. They returned and then the petitioner/the driver of the autorikshaw along with other passengers in the autorikshaw is alleged to have attacked the victims with a torch light which was available in their possession. Allegations of wilful infliction of a grievous hurt is raised against the petitioner and the co-accused.

4. The learned counsel for the petitioner submits that the allegations are totally false. The allegations are raised to cover up the real incident which had taken place. Deliberate false allegations are now being raised that the grievous hurt which was suffered by the principal victim was suffered in the incident which took place on 12/8/07 at the scene of the crime. The real truth is entirely different. According to the petitioner, when the petitioner along with some other passengers were proceeding in

the autorikshaw driven by the petitioner, the party of the de facto complainant had wanted the autorikshaw to be stopped. According to them, a person had suffered a fracture in a football match and that injured person had to be carried in the autorikshaw. The petitioner could not oblige. The other passengers in the autorikshaw were unwilling to get out. At that point, the party of the de facto complainant in this crime attacked the autorikshaw driver and the passengers and caused injuries to them. About that incident, a counter case – Crime No.165/07, has been registered. Now conveniently the de facto complainant suppressing the fact that the principal injured had earlier suffered the injury in a football match is attempting to make it appear that the said grievous injury was also suffered in the incident which took place. The learned counsel for the petitioner relies particularly on the admitted averment in the First Information Statement that the alleged victims were returning after a football match. This, the learned counsel for the petitioner submits, when read along with the forthright statement in the First Information Statement in Crime No.165/07 by the victim/passenger in the autorikshaw must convince the

court of the truth of the petitioner's version of what really had happened.

5. In the nature of the contentions raised, this Court directed the learned Public Prosecutor to place the Case Diaries in both the cases before me. I have anxiously perused both the Case Diaries.

6. The learned Public Prosecutor opposes the application. But notwithstanding the opposition, in the circumstances referred above, I am satisfied that the petitioner deserves to be granted anticipatory bail. In coming to this conclusion, I take note of the admitted fact that the petitioner had no prior motive whatsoever against the victims. I take note of the further fact that there is the admitted statement that the victims were returning after a football match. I take note of the further fact that in the First Information Report in the counter case it has been specifically alleged that the attempt on the part of the de facto complainant was to stop the autorikshaw to carry a person who had suffered a fracture in the football match to the Doctor. A more detailed discussion on the acceptability of the allegations or the credibility of the data collected does not appear to be

necessary in the circumstances.

7. In the result, this petition is allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioner shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 9/10/07. He shall be released on regular bail on his executing a bond for Rs.25,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 10/10/07 and 11/10/07. During this period, the Investigator shall be at liberty to interrogate the petitioner in custody and do all thinks necessary for the investigation. Thereafter the petitioner shall appear before the Investigating Officer for interrogation on all Mondays between 10 a.m. and 12 noon for a period of one month. Subsequently, he shall so make himself available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as if these directions were not issued at all;

(iv) If the petitioner were arrested prior to his surrender on 9/10/07 as directed in clause (i) above, he shall be released on his executing a bond for Rs.25,000/- without any sureties undertaking to appear before the learned Magistrate on 9/10/07.

Sd/-

(R. BASANT, JUDGE)

Nan/

//true copy//

P.S. to Judge